



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

160 Curtis Avenue, Toryglen, Glasgow G44 4NP ("the Property")

Case Reference: FTS/HPC/CV/24/4933

**Lauren MacMillen-Warren, 10 Anderson Fairway, North Berwick EH39 5GX ("the
Applicant")**

**Principal Investment Lets, Unit 30, 204 Main Street, Glasgow ML5 3RB ("the
Applicant's Representative")**

**Claudine Goughan Burke, 160 Curtis Avenue, Toryglen, Glasgow G44 4NP ("the
Respondent")**

1. By Application Form F dated 25 October 2024 the Applicant sought an order under rule 111 of the Rules. At part 5 of the application the Applicant stated that the order sought was "Landlord would like possession of the Property." The Applicant lodged a copy private residential tenancy for the Property which commenced on 5 May 2021.
2. By emails dated 29 November 2024 and 6 January 2025 the information essential to support an application for an eviction order was sought. That information included a copy notice to leave served under the Private Housing (Tenancies)(Scotland) Act 2016 giving the appropriate period of notice; proof of service of the notice to leave; evidence to support the ground for eviction and a copy section 11 notice with proof of it having been sent to the local authority. A copy tenancy agreement was provided but none of the other essential information was lodged.

DECISION

3. The Legal Member considered the Application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

- (a) they consider that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

- 4. After consideration of the Application and documents lodged in support of same the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env

LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

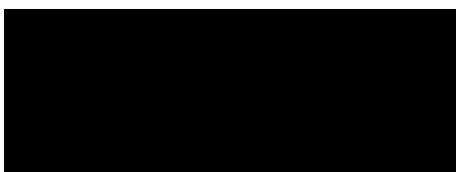
6. The Applicant appeared to seek an order for possession of the Property. In those circumstances the wrong application form had been used and the wrong rule referred to therein. None of the documentation essential to support an application for an order for possession had been lodged. In terms of section 52(2) of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless the application is accompanied by a notice to leave that has been given to the tenant. No such copy notice was provided. In all the circumstances, the Legal Member determines that the Application is frivolous, misconceived and has no prospect of success. The Application is rejected on that basis.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.



Joan Devine
Legal Member
20 February 2025